



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

TRG

Docket No: 1656-00

28 June 2000

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]

Ref: (a) Title 10 U.S.C. 1552

Encl: (1) Case Summary
(2) Subject's naval record

1. Pursuant to the provisions of reference (a), Petitioner, an enlisted member of the United States Navy filed enclosure (1) with this Board requesting that his record be corrected to show that he transferred to the Fleet Reserve under the provisions of the Temporary Early Retirement Authority (TERA).

2. The Board, consisting of Mr. Rothlein, Mr. Pfeiffer and Mr. Whitener, reviewed Petitioner's allegations of error and injustice on 27 June 2000 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. Enclosure (1) was filed in a timely manner.

c. On 12 March 1996 Petitioner was found unfit for duty due to coronary artery disease, which was rated at 60% disabling. He transferred to the Temporary Disability Retired List (TDRL) on 27 June 1996. At that time, he had completed 18 years, 11 months and 17 days of active service. Subsequently, following surgery and physical therapy, he was found fit for duty on 13 March 2000 and was given the option of reenlistment or discharge.

d. Petitioner states in his application that he was advised in 1996 that he had the option of retiring under TERA or transferring to the TDRL. Additionally, he was advised that the lowest rating which could be given for his condition was 30% and that he would eventually be given permanent disability retirement. Acting on this advice, he opted for transfer to the

TDRL. He now requests that he be retired under TERA.

e. Attached to enclosure (1) is an advisory opinion from the Navy Personnel Command which states, in part, as follows:

.... Based on this review it has been determined that if the member had chosen transfer to the Fleet Reserve under the provisions of TERA program vice placement on the TDRL, his request would have probably been approved

... It is recommended that (Petitioner's) petition for correction to his record be approved for transfer to the Fleet Reserve under the TERA program

f. The Board is aware that the Uniform Retirement Date Act, 5 U.S.C. 8301, requires that the effective date of a retirement be the first day of the month. This requirement does not apply to disability retirements.

CONCLUSION:

Upon review and consideration of all the evidence of record the Board concludes that Petitioner's request warrants favorable action. The Board notes that if Petitioner had been properly advised in 1996, it would have been in his best interest to retire under TERA. Therefore, the Board agrees with the recommendation contained in the advisory opinion and concludes that the record should be corrected to show that he transferred to the Fleet Reserve under the provisions of TERA. Given the requirements of the Uniform Retirement Date Act, the record should be corrected to show that he transferred to the Fleet Reserve on 1 July 1996 vice being transferred to the TDRL on 27 June 1996.

The Board further concludes that this Report of Proceedings should be filed in Petitioner's naval record so that all future reviewers will understand the reason why he was retired under TERA.

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that he transferred to the Fleet Reserve on 1 July 1996 under the provisions of TERA vice the transfer to the TDRL on 27 June 1996 now of record.

b. That this Report of Proceedings be filed in Petitioner's naval record.


4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN
Recorder



ALAN E. GOLDSMITH
Acting Recorder

5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.



W. DEAN PFEIFFER
Executive Director